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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/628,859	07/28/2003	Thomas R. Hetzel	249.302	3847

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EXAMINER


D ADAMO, STEPHEN D

ART UNIT	PAPER NUMBER
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3636

DATE MAILED: 11/02/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/628,859	<b>Applicant(s)</b> HETZEL ET AL. 	
	<b>Examiner</b> Stephen D'Adamo	<b>Art Unit</b> 3636	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-54 is/are pending in the application.
- 4a) Of the above claim(s) 32-54 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-31 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 28 July 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. ____. |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/3;12/24;7/22</u> . | 6) <input type="checkbox"/> Other: ____.  |

## **DETAILED ACTION**

### ***Election/Restrictions***

1. During a telephone conversation with John Lay on 8 October 2004 a provisional election was made without traverse to prosecute the invention of the apparatus or modular seat cushion, and the species of Figure 9, claims 1-31. Affirmation of this election must be made by applicant in replying to this Office action. Claims 32-54 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

### ***Drawings***

2. The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the "resilient plastic beads" must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. The replacement sheet(s) should be labeled "Replacement Sheet" in the page header (as per 37 CFR 1.84(c)) so as not to obstruct any portion of the drawing figures. If the changes are not accepted by the examiner, the applicant will be notified

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and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-31 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

It is indeterminate as to whether applicant's independent claims, each individually assessed as a whole, are drawn to an apparatus per se or to the combination of an apparatus and *a modular seat cushion including a seat support to which the cushion is supported*. The conclusion is reached for the reason that the opening recitation of the preamble in applicant's claim sets forth that the claimed invention is to "an apparatus" or *a modular seat cushion*. This opening recitation is followed by a recitation that the claimed apparatus is "*for supporting a person against a seat support structure of a predetermined configuration*." However, further within the claims, the applicant positively claims "*the seat support structure*".

It is indeterminate as to whether applicant's independent claims, each individually assessed as a whole, are drawn to an apparatus per se or to the combination of an apparatus and *a base structure including a human interface portion and a seat support to which the base portion is supported*. The conclusion is reached for the reason that the opening recitation of the preamble in applicant's claim sets forth that the claimed

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invention is to “an apparatus” or *a base structure*. This opening recitation is followed by a recitation that the claimed apparatus is “*for attaching a human interface portion of a seat cushion to a seat support structure of a wheelchair.*” However, further within the claims, the applicant positively claims “*the human interface portion,*” as well as, “*the seat support structure*”.

***Claim Rejections - 35 USC § 102***

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 8, 9, 12-16, 19 and 28 are rejected under 35 U.S.C. 102(e) as being anticipated by Lampel (6,625,830).

Lampel discloses a wheelchair cushion comprising a human interface portion 24 having an upper surface 25 and 26 defining a support contour and also having a lower surface (unlabeled but located on the underside of portion 24) defining a first one of two complementary portions of an interlocking structure. The cushion also comprises a base portion 12 having an upper surface 34 defining a second one of the two complementary portions and also having a lower surface 30 defining a contact configuration. The second complementary portion interconnects with the first complementary portion. The contact configuration of the base portion has a predetermined shape, complementing at least a

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portion of a seat support structure on a wheelchair. Further, the first and second complementary portions extend over the entire area of the lower surface of the human interface portion and the upper surface of the base portion. Also, the contact configuration extends over the entire area of the lower surface of the base portion. Both of the complementary portions are of a substantially complementary shape to one another. Moreover, the lower surface of the human interface portion includes a protrusion that interconnects into the recesses formed in the upper surface of the base portion, between the adductor elements 14 and abductor elements 16. The portions of the lower surface of the human interface portion adjacent the protrusion has a complementary shape to a portion of the upper surface of the base portion adjacent the recess. Lampel also teaches of a covering 28 that encases the human interface portion and the base portions.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 17-18 and 24-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lampel (6,625,830).

Lampel discloses a wheelchair cushion comprising a human interface portion 24 having an upper surface 25 and 26 defining a support contour and also having a lower surface

(unlabeled but located on the underside of portion 24) defining a first one of two complementary portions of an interlocking structure. The cushion also comprises a base portion 12 having an upper surface 34 defining a second one of the two complementary portions and also having a lower surface 30 defining a contact configuration. The second complementary portion interconnects with the first complementary portion. The contact configuration of the base portion has a predetermined shape, complementing at least a portion of a seat support structure on a wheelchair. However, Lampel fails to expressly disclose that the recess extends completely through the base portion while the human interface portion rests directly on the seat support structure. Yet, since the applicant's specification does not state that the recess, which extends completely through the base portion, as claimed, solves any particular problem or produces any unexpected result, whether the recess extends half-way or completely through the base portion is merely a matter of engineering design choice, and thus does not serve to patentably distinguish the claimed invention over the prior art. Lampel teaches that the human interface portion complements the recess of the base portion. Thus, if the recess in the base portion did extend through the entire base portion, the human interface portion would complement the hole.

Further, Lampel fails to expressly disclose that the base portion and the seat support structure are essentially the same element. As understood, the two elements have been combined to form a single element. It would have been obvious to one having ordinary skill in the art at the time the invention was made to combine the base portion 30 with the wheelchair seat support structure, since it has been held that forming in one piece an

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article which has formerly been formed in two pieces and put together involves only routine skill in the art.

Claims 2-7, 20-23 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lampel (6,625,830) in view of Saloff et al. (4,643,481).

Lampel discloses a wheelchair cushion comprising a human interface portion 24 having an upper surface 25 and 26 defining a support contour and also having a lower surface (unlabeled but located on the underside of portion 24) defining a first one of two complementary portions of an interlocking structure. The cushion also comprises a base portion 12 having an upper surface 34 defining a second one of the two complementary portions and also having a lower surface 30 defining a contact configuration. The second complementary portion interconnects with the first complementary portion. The contact configuration of the base portion has a predetermined shape, complementing at least a portion of a seat support structure on a wheelchair. However, Lampel fails to expressly disclose that the human interface portion and the base portion are made up of a plastic. Yet, Saloff teaches of a seat system for preventing decubiti including a base portion 46 and a human interface portion 48. Both portions are molded from plastic. It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cushion of Lampel with a plastic material, as taught by Saloff for providing a more durable wheel chair seat cushion. Regarding claims 4-6, the patentability of a claim to a product does not depend on merely a difference in its method of production, but on whether the product itself is new and unobvious. If the product in a product-by-process claim is the same as or obvious from a product of the prior art, the claim is unpatentable



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even though the prior product was made by a different process. When the prior art discloses a product which reasonably appears to be either identical with or only slightly different than a product claim in a product-by-process claim, the burden is on the applicant to present evidence from which the examiner could reasonably conclude that the claimed product differs in kind from those of the prior art. This burden is NOT discharged solely because the product was derived from a process not known in the prior art.

Regarding claims 20-23, Saloff teaches that top member 48 nests in bottom member 46. Further, Saloff discloses, "In practice, base 10 may be molded in a variety of sizes in order to approximately fit each user....cushion 12 can be used in combination with base 10 to more precisely fit the seating system of this invention to the anatomy of an individual user. Base 10 may be constructed of plastic or any other material having adequate strength which can be fabricated in the shapes just described" (col.4, lines 41-48). It would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the cushion of Lampel with the teaching of Saloff to produce a variety of sizes and shapes to more precisely fit the user of the wheelchair. Note, one skilled in the art would recognize that the contact configuration of a base would change according to the support presented with a wheelchair, whether it's a sling support, a plate support, a pan support, etc.

Claims 10 and 11 are rejected under 35 U.S.C. 103(a) as being unpatentable over Lampel (6,625,830) in view of Morrison et al. (5,088,747).

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Lampel discloses a wheelchair cushion comprising a human interface portion 24 having an upper surface 25 and 26 defining a support contour and also having a lower surface (unlabeled but located on the underside of portion 24) defining a first one of two complementary portions of an interlocking structure. The cushion also comprises a base portion 12 having an upper surface 34 defining a second one of the two complementary portions and also having a lower surface 30 defining a contact configuration. The second complementary portion interconnects with the first complementary portion. The contact configuration of the base portion has a predetermined shape, complementing at least a portion of a seat support structure on a wheelchair. However, Lampel fails to expressly disclose a seat support structure. Morrison teaches of a wheelchair seating system comprising a seat support structure 110. The seat support structure of Morrison complements the entire contact configuration of Lampel. Further, the seat support structure is a sling seat. It would have been obvious to one having ordinary skill in the art at the time the invention was made to use the wheelchair cushion of Lampel with the wheelchair and specifically, the seat support sling of Morrison, for providing an adequate support for Lampel's seat cushion.

### ***Conclusion***

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Harding et al. (6,142,573), Laidlaw (5,918,334), Liou (5,226,188), Fulton (4,629,246), Habboub et al. (2003/0041379), Robinson (GB 2,052,965) and Haas (FR 2,639,809) all show various features of the claimed subject matter.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen D'Adamo whose telephone number is 703-305-8173. The examiner can normally be reached on Monday-Thursday 6:00-3:30, 2nd Friday 6:00-2:30.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Pete Cuomo can be reached on 703-308-0827. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

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October 28, 2004

  
**PETER R. BROWN**  
**PRIMARY EXAMINER**